NO. 93-542

Supreme Court, U.S.
FILED
JAN 3 1994
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1993

In the Matter of PARUL P.,
A Child Under Eighteen Years of Age Alleged to be Abused by RASHMI, P.,
Petitioner,

- against -

COMMISSIONER OF SOCIAL SERVICES,
Respondent.

PETITIONER'S REPLY BRIEF ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT APPELLATE DIVISION SECOND DEPARTMENT

KATZ AND RICCI
P.O. Box 7556
89-04 Eliot Avenue
Rego Park, New York 11374
(718) 457-5994
Counsel of Record and Attorneys for Petitioner Rashmi P.

ROBERT A. KATZ*
MICHAEL V. RICCI
Of Counsel
*Attorney of Record

BEST AVAILABLE COPY

DICK BAILEY SERVICE (212) 608-7666 (718) 447-5358 (516) 222-2470 (914) 682-0848 Fax: (718) 273-8031
1-800-564-4918

TABLE OF CONTENTS

Pages

Statement 1-2

Point

Information Was Withheld From Petitioner Which Impaired A Fair Trial 2-3

Conclusion 4

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1993

In the Matter of PARUL P.,
A Child Under Eighteen Years of Age Alleged to be
Abused by RASHMI, P.,

Petitioner,

- against -

COMMISSIONER OF SOCIAL SERVICES,

Respondent.

STATEMENT

It is undisputed that the charges confronted by this Petitioner in both Criminal Court and Family Court were substantively identical and were intended to cover the same acts of complained wrong doing.

It is also undisputed that in the felony court the following occurred:

(a) The infant Parul went before the Grand Jury and Petitioner was indicted.

(b) The People served a Bill of Particulars specifying the dates of the charged acts.

(c) On the dates set out in the Peoples Bill of Particulars Petitioner demonstrated he was in India from where he returned on April 8, 1988 (23(a))

In Family Court where rights and devices necessary for a defense are denied to Petitioner, Petitioner is adjuded guilty of the same acts.

It is in this context that this Court is asked to apply the *Brady* rule to the facts of this case and to say to the State of New York that what occurred in the Family Court was in substance a Criminal Trial.

POINT
INFORMATION WAS WITHHELD FROM PETITIONER WHICH IMPAIRED A FAIR TRIAL

At page 30 of the Respondent Commissioner's Brief there appears the statement:

> Parul had not discussed with Dr. Lewittes that she had been abused by the superintendent.

Indeed, Dr. Lewittes so testified at the Trial:

> Q. Were you informed that the child was sexually abused by the superintendent of the building?
>
> Mr. Covell: Objection
>
> The Court: Overruled
>
> A. No
>
> (Tr 35 Feb 28, 1990)

Accompanying this reply is an exhibit of the validatior's notes and Parul's notations which calls into serious question the above testimony of the Doctor and the representation of the Commissioner before this Court. This

Exhibit clearly shows that *Frank the superintendent* was in fact discussed and identified when Purul was interviewed by Dr. Lewittes (also see Appendix F pg. 29 (1) indicating that Parul told the Police about sexual abuse by Frank the Superintendent)

If the Court examines the accompanying exhibit it will find inscribed in the notes of Dr. Lewittes on the next to the last page --*FRANK SUPERINTENDENT*--

The raw notes including notations of Parul and audio tapes were withheld from Petitioner's counsel at trial. The raw notes as redacted by the Supreme Court of the State of New York (Cooperman, J), were only provided after the Family Court fact finding trial was completed. The Appellate Division Second Department on the appeal refused to consider either the raw notes or the audio tapes.

If such materials should have been made available under *Brady*, then clearly depriving Petitioner of same was critical and fundamental error.

CONCLUSION

In The basic interest of Justice Petitioner requests that this Court use its inherant powers to order the Commissioner to produce the unredacted raw notes and audio tapes for this Courts examination before this Court rules on the merits of the instant Petition

Respectfully Submitted,

Robert A. Katz
Attorney of Record
Katz and Ricci
P.O. Box 7553
89-04 Eliot Avenue
Rego Park, NY 11374

Robert A. Katz
Michael V. Ricci
Of Counsel